


	केंद्रीय कर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX		
सत्यमेव जयते	वस्तु एवं सेवा कर भवन	GST Building, 7 th Floor Near Polytechnic Ambavadi, Ahmedabad 380015	
	सातवीं मंजिल पोलिटेक्निक के पास		
	आम्बावाडी अहमदाबाद-380015		
 079-26305065			 टेलिफैक्स : 079-26305136

क फाइल संख्या : File No : **V2/66/GNR/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-47-18-19**

दिनांक Date **26/07/18** जारी करने की तारीख Date of Issue: **17/8/2018**

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :

03/KS/2017-18 दिनांक : **26-03-2018** से सृजित

Arising out of Order-in-Original: **03/KS/2017-18**, Date: **26-03-2018** Issued by:
Superintendent, CGST, Div: Supdt. AR-II div. Kalol, Gandhinagar Commissionerate, Ahmedabad.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Surya Containers Pvt. Ltd

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

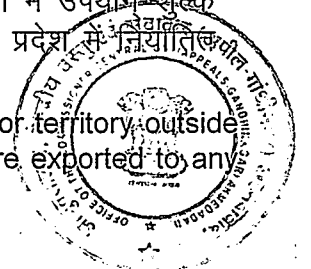
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित हैं।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.



- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (C) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- ष0बी/35-इ के अंतर्गत:-

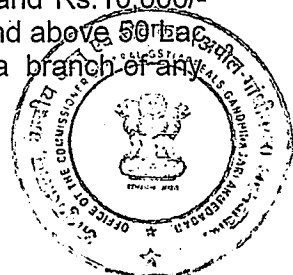
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होत है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन अधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 63 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-ORIGINAL

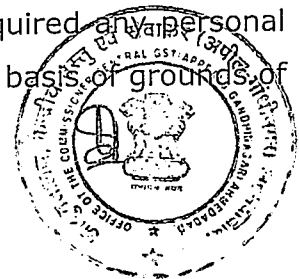
M/s Surya Containers Pvt Ltd, Plot No.49/5, Near Olympic Laminates, Khatraj Cross Road, Kalol HQ, Dist. Gandhinagar [for short-the appellant] has filed this appeal against Order-in-Original No.03/KS/2017-18 dated 26.03.2018 [for short-impugned order] passed by the Superintendent of Central GST & Excise, AR-II, Kalol Division [for short-adjudicating authority].

2. Briefly stated, facts of the case are that based on an Audit Report dated 27.03.2017, the appellant was asked to pay [i] central excise duty amounting to Rs.1,19,499/- arise due to non submission of re-warehousing certificate/non submission of proof of export and [ii] Rs.3,81,601/- towards wrongly availment/utilization of CENVAT credit on common input services used in the production of dutiable goods well as trading goods. Being agreed with the said observation, the appellant have paid the said duty /wrongly availed and utilized CENVAT credit. However, they did not pay interest on the duty involved as well as CENVAT credit wrongly availed and penalty thereof. Therefore, a show cause notice dated 28.04.2017 was issued to them, demanding/denial of central excise duty/wrongly availed CENVAT credit with interest amount and imposition of penalty. The notice also proposes appropriation of duty/CENVAT credit not paid/reversed. Vide the impugned order, the adjudicating authority has [i] confirmed/denied the duty not paid/wrongly availed CENVAT credit with interest; imposed penalty of Rs.50,110/- under Section AC of Central Excise Act, 1944 and ; [iii] appropriated the amount of duty paid/CENVAT credit reversed.

3. Being aggrieved, the appellant has filed the instant appeal on the grounds that:

- There is no dispute that the goods have been received by the party; that mere non-issue of CT-2 certificate cannot be basis for demand of duty and at the best it can be considered as procedural violation. They relied on Hon'ble CESTAT's decision in case of M/s Blue Star Ltd-2017 [358] ELT 478-Tr Mum], where in it has been held when export of goods not in doubt, duty cannot be demanded on the ground that proof of export is not received.
- The department wants to disallow a part of the credit worked out on the basis of ratio between manufacturing and trading activities since the goods involved in trading activities are exempted goods; that trading activities cannot be equated with exempted goods envisaged under Rule 6(2) of Cenvat Credit Rules;
- Demand is time barred.

4. A personal hearing in the matter was granted on 19.07.2018. However, the appellant, vide their letter dated intimated that they do not required a personal hearing in the matter and requested to decide the matter on the basis of grounds of appeal.



5. I have carefully gone through the facts of the case and submissions made by the appellant in the appeal memorandum. The limited point to be decided in the matter is as to whether the duty demanded/denied with interest and penalty imposed in respect of matter relating to [i] non-submission of warehousing certificate/proof of export on removal/export of goods to SEZ/abroad; and [ii] denial of CENVAT credit of Rs.3,81,601/-availed/utilized on common input services used in production of dutiable goods as well as trading goods as mandated under Rule 6(3) of the CCR is correct or otherwise.

6. At the outset, I observe that the appellant has accepted the observation of the Audit Officer and paid the duty/reversed the CENVAT credit involved in non-submission of re-warehousing certificate/proof of export as well as CENVAT credit on input services availed/utilized on the common input services. However, since they did not pay the interest and penalty, the adjudicating authority has issued show cause notice and confirmed the allegations.

7. As regards [i] above, it is a fact that the appellant had removed goods to SEZ vide AR-3s and also removed goods under ARE-1s to foreign countries and failed to submit re-warehousing certificate/ proof of export as the case may be. The appellant contended that since the goods have been received by the receiver party, non-submission of documents is to be considered as procedural lapse. However, I observe that the appellant has not furnished any documentary support to evidence that the goods in question have been received by the receiver party either in the case of AR-3 or ARE-1 removal. Therefore, clause under Para 13.6 of Chapter 7 of the CBEC Manual of Supplementary Instructions, concerning "Export without payment of duty" is clearly attracted in this case. As per the said clause, in case of non-export of goods within stipulated period, the exporter shall himself deposited the excise duties along with interest on his own immediately or within ten days of the memorandum given by the department. Otherwise, action can be initiated to recover duty along with interest and penalty/fine. In the instant case, I observe that the appellant has accepted the fault of non-submission of required re-warehousing certificate/proof of export and accordingly they paid the excise duty in question involved on such removal. In the circumstances, the adjudicating authority has correctly confirmed the duty along with interest and imposed penalty thereof and no interfering required.

8. As regards [ii] above, undisputed facts reveals that the appellant has availed/utilized CENVAT credit on the common input services used in the production of dutiable goods as well as trading goods as mandated under Rule 6(3) of the CCR. The appellant contended that the trading activities cannot be equated with exempted goods envisaged under Rule 6(2) of Cenvat Credit Rules. I observe that CENVAT Credit Rules, 2004 has been amended in the year 2011, wherein it has been clarified that 'exempted goods' includes 'trading'. In the circumstances, the observation raised by the Audit Officer is absolutely correct and the appellant is



required to follow the procedure/provisions of Rule 6(3) of CCR. I observe that, the appellant is aware of the said procedure and provisions and therefore, on being pointed out the same they reversed the CENVAT credit of Rs.3,81,601/-which is correct and acceptable. Since levy of interest and imposition of penalty is attracting on wrongly availment/utilization of CENVAT credit as per provisions of CCR read with Central Excise Act, the appellant is liable for the same. Therefore, the action taken by the adjudicating authority is proper and correct and in this issue also no interference required.

9. In view of above discussion, I uphold the impugned order totally and reject the appeal filed by the appellant. The appeal stands disposed of accordingly.

उमा शंकर

(उमा शंकर)

आयुक्त (अपील्स)

Date: /07/2018

Attested

Mohanan V.V.
(Mohanan V.V)
Superintendent (Appeals)
Central GST, Ahmedabad

By R.P.A.D

To

M/s Surya Containers Pvt Ltd,
Plot No.49/5, Near Olympic Laminates,
Khatraj Cross Road, Kalol HQ, Dist. Gandhinagar

Copy to:-

1. The Chief Commissioner, Central Excise, Ahmedabad Zone .
2. The Principal Commissioner, Central CGST, Gandhinagar
3. The Deputy/Assistant Commissioner, Central GST, Kalol Dn.
4. The Superintendent, Central GST, AR-II, Kalol Dn. Gandhinagar
5. The Assistant Commissioner, System-Gandhinagar.
6. Guard File.
7. P.A. File.

